



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2007-0154; FRL-9487-1]**

#### **Approval and Promulgation of Implementation Plans; New Mexico;**

#### **Albuquerque/Bernalillo County; Fees for Permits and Administrative Actions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing an approval of revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico Albuquerque/Bernalillo County, which relate to fee requirement regulations. The repeal and replace and SIP revisions proposed today would address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. EPA finds that these rules and revisions comply with applicable provisions of the CAA and is proposing to approve them into the SIP. This action is being proposed under section 110 of the Act.

**DATES:** Comments must be received on or before **[insert the date 30 days after date of publication in FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2007-0154 by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 “Contact Us” web site: <http://epa.gov/region6/r6coment.htm> Please click on “6PD” (Multimedia) and select “Air” before submitting comments.
- E-mail: Ms. Ashley Mohr at [mohr.ashley@epa.gov](mailto:mohr.ashley@epa.gov).
- Fax: Ms. Ashley Mohr, Air Permits Section (6PD-R), at fax number 214-665-6762.
- Mail: Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Hand or Courier Delivery: Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8:00 am and 4:00 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2007-0154. EPA’s policy is that all comments received will be included in the public docket without change and

may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in

the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the FOR FURTHER INFORMATION CONTACT paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The New Mexico submittals are also available for public inspection at the County Air Agency listed below during official business hours by appointment:

Air Quality Division, Environmental Health Department, 3rd Floor, Suite 3023, One Civic Plaza NW, Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; e-mail address [mohr.ashley@epa.gov](mailto:mohr.ashley@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document the following terms have the meanings described below:

- “we”, “us” and “our” refer to EPA.
- “Act” and “CAA” mean the Clean Air Act.
- “40 CFR” means Title 40 of the Code of Federal Regulations – Protection of the Environment.
- “SIP” means the State Implementation Plan established under section 110 of the Act.

- “NSR” means new source review.
- “TSD” means the Technical Support Document for this action.
- “NAAQS” means any national ambient air quality standard established under 40 CFR part 50.

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## **I. The State’s Submittals**

### **A. What Action is EPA Proposing?**

This notice provides a summary of our evaluation of the Governor of New Mexico’s submissions regarding Part 2 fees for the Albuquerque/Bernalillo County, New Mexico State

Implementation Plan (SIP). The Albuquerque/Bernalillo County AQCB is the federally delegated air quality authority for Albuquerque and Bernalillo County. The Albuquerque/Bernalillo County AQCB is authorized to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards. The Albuquerque/Bernalillo County AQCB is responsible for the portion of the New Mexico SIP that applies in Bernalillo County, which encompasses the City of Albuquerque.

We provide the reasoning comprising our evaluation in general terms in this proposed rulemaking but provide a more detailed evaluation and analysis in the Technical Support Document (TSD) that has been prepared for this proposed rulemaking. We are proposing to approve the repeal and replace rule submitted on May 24, 2011, and SIP revisions submitted by the Governor of New Mexico to EPA on September 4, 2004, February 2, 2007, and December 10, 2010. We have evaluated these SIP submissions for consistency with applicable provisions of section 110(a)(2) of the CAA relating to fees. We have also reviewed the submitted rules and revisions for legal sufficiency pursuant to section 110(l) of the CAA.

In the course of this review, we identified that on April 10, 1980, EPA approved revisions to Section 21, Fees into the Albuquerque/Bernalillo County, New Mexico SIP (45 FR 24468). Since EPA's approval, the Governor of New Mexico had not previously submitted any revisions to this Section for EPA review and approval, although the Section was eventually repealed and replaced by the Albuquerque/Bernalillo County AQCB effective July 1, 2001. The repeal and replace rule was submitted to EPA on May 24, 2011 (hereafter referred to as "2001 repeal and replace") as a historical rule amendment and repeals and replaces the corresponding previously approved April 10, 1980 SIP for fees.

The 2001 repeal and replace was recodified and adopted into Albuquerque/Bernalillo County rules three times: first to Chapter 74, Article 2, Part 2, Fees under the Albuquerque/Bernalillo County AQCB regulations, and recodified again to 20 NMAC 11.02, Permit Fees of the New Mexico Administrative Code (hereinafter 20.11.2 NMAC) before being submitted for EPA review and approval as recodified 20.11.2 NMAC, Permit Fees on May 24, 2011. New Mexico submitted to EPA for review revisions to 20.11.2 NMAC on September 7, 2004 and February 2, 2007, and another submittal of revisions on December 15, 2010. The September 7, 2004, February 2, 2007, and December 15, 2010 rule revisions have been determined to be significantly different from the EPA approved April 10, 1980 SIP revisions, as these previously approved revisions reference only fees associated with specific construction activities under minor new source review (NSR) permitting. Therefore, a direct comparison to the approved Albuquerque/Bernalillo County, New Mexico SIP is impractical, and the technical review of the May 24, 2011 submittal of the 2001 repeal and replace will be used as the baseline SIP for evaluation of the September 7, 2004, February 2, 2007, and December 15, 2010 revisions.

A technical analysis of the May 24, 2011 submittal of the 2001 repeal and replace, and the September 7, 2004, February 2, 2007, December 15, 2010 SIP rule revisions has found that the baseline repeal and replace rule, and the revisions to this rule are consistent with applicable provisions of section 110(a)(2) of the CAA. Therefore, EPA is proposing an approval of the fees SIP rules submitted on May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010.

#### B. Which Rules did the State Submit?

##### 1. May 24, 2011 submittal of the 2001 Repeal and Replace Revisions

The Governor of New Mexico submitted on May 24, 2011 a 2001 repeal and replace of all previous versions of Section 21 and Part 2 fees, including the prior 1980 EPA approved SIP relating to fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Repeal and replace of the following sections:* 20.11.2.1 NMAC, Issuing Agency; 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.4 NMAC, Duration; 20.11.2.5 NMAC, Effective Date; 20.11.2.6 NMAC, Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.8 NMAC, Savings Clause; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule.

## 2. September 7, 2004 SIP Revision Submittal

The Governor of New Mexico submitted a revision on September 7, 2004 to 20.11.2 NMAC, Fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Revisions to the following sections:* 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.6 NMAC, Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit



Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule.

### 3. February 2, 2007 SIP Revision Submittal

The Governor of New Mexico submitted a revision to 20.11.2 NMAC, Fees on February 2, 2007 under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Revisions to the following sections:* 20.11.2.6 NMAC, Objective; 20.11.2.18 NMAC, Fee Schedule.

### 4. December 15, 2010 SIP Revision Submittal

The Governor of New Mexico submitted to EPA revisions on December 15, 2010 to sections of Part 2 Fees under the Albuquerque/Bernalillo County AQCB regulations. This submittal includes the following changes:

- *Additions of the following sections:* 20.11.2.19 NMAC, Application Review Fees for Modification of Existing Permits; 20.11.2.20 NMAC, Administrative and Technical Revision Application Fees, Portable Stationary Source Relocation Fees; 20.11.2.21 NMAC, Annual Emission Fees and Rates for Stationary Sources; 20.11.2.22 NMAC, Miscellaneous Fees, Administrative Fees, Variance Request Fees, Board Hearing Filing Fees.
- *Revisions to the following sections:* 20.11.2.1 NMAC, Issuing Agency; 20.11.2.2 NMAC, Scope; 20.11.2.3 NMAC, Statutory Authority; 20.11.2.6 NMAC,

Objective; 20.11.2.7 NMAC, Definitions; 20.11.2.8 NMAC, Savings Clause; 20.11.2.9 NMAC, Severability; 20.11.2.10 NMAC, Documents; 20.11.2.11 NMAC, General Provisions; 20.11.2.12 NMAC Authority-to-Construct Permit Fees, Fee Calculations and Procedures; 20.11.2.13 NMAC, Annual Emission Fees, Fee Calculations and Procedures; 20.11.2.15 NMAC, Filing and Inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures; NMAC 20.11.2.16 NMAC, Fee Errors, Corrections and Refunds; 20.11.2.17 NMAC, Failure to Pay; 20.11.2.18 NMAC, Fee Schedule;

Table 1 summarizes the changes that are in the 2001 repeal and replace submitted May 24, 2011, and the three SIP revisions submitted September 7, 2004, February 2, 2007, and December 15, 2010. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section II of this preamble. The Technical Support Document (TSD) includes a detailed evaluation of the referenced SIP submittals.

Table 1. Summary of each SIP submittal that is affected by this action.

Section	Title	Submittal Dates	Description of Change	Proposed Action
20.11.2 NMAC – Fees				
Issuing Agency				
20.11.2.1 NMAC	Issuing Agency	5/24/2011	Repeal and replace: Contact information for issuing agency	Approval
		12/15/2010	Revised section to update contact information for issuing agency	Approval
Scope				

20.11.2.2 NMAC	Scope	5/24/2011	Repeal and replace: Scope of rule applicability, exemption, and variance	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (A) <sup>1</sup>
		9/7/2004 12/15/2010	Revised applicability to persons consistent with specific fee updates	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (A)
Statutory Authority				
20.11.2.3 NMAC	Statutory Authority	5/14/2011	Repeal and replace: Fees provisions adopted pursuant to state statutory authority	Approval
		9/7/2004 12/15/2010	Revised section to include recodification and additional references to statutory authority	Approval
Duration				
20.11.2.4 NMAC	Duration	5/24/2011	Repeal and replace: Rules to be of permanent duration	Approval
Effective Date				
20.11.2.5 NMAC	Effective Date	5/24/2011	Repeal and replace: Rules to be effective July 1, 2001	Approval
Objective				
20.11.2.6 NMAC	Objective	5/24/2011	Repeal and replace: Establishes objectives for fees rules	Approval
		9/7/2004 2/2/2007 12/15/2010	Revises section to remove and add objectives consistent with specific fee updates	Approval
Definitions				

<sup>1</sup>The 2001 repeal and replace submitted May 24, 2011, and the September 7, 2004, February 2, 2007, and December 15, 2010 Fees SIP submittals reference Operating Permits (20.11.42 NMAC) related to the Title V program. The Title V program is subject to statutory and regulatory evaluation beyond the statutory scope of this rulemaking. CAA Section 110(a)(2) falls under Title I of the CAA. Any evaluation of the Title V program and related fees must be done pursuant to CAA section 502 through 507 and 40 CFR part 70 and we are not evaluating the fees provisions related to the Title V program as part of this action regarding the SIP. The scope of this action is limited to determining whether the City of Albuquerque/Bernalillo County AQCB fees SIP submittals meet the fees requirements of CAA 110(a)(2). Refer to the TSD for additional information regarding the specific portions of subsections relating to Title V we are not taking action on in this rulemaking.

20.11.2.7 NMAC	Definitions	5/24/2011	Repeal and Replace: Provides definitions for the following as used in the fees rules: “Allowable Emission Rate”, “Emissions Unit”. “Fee Pollutant”, “Fugitive Emissions”. “Major Source”, “Potential to Emit” or “PTE”, “Qualified Small Business”, “Regulated Air Pollutant”, “Stationary Source with De Minimis Emissions”	Approval
		9/7/2004	Section revised to include recodification and other non substantive changes. Definitions added:“High Impact Source”, “Low impact Source”, “Moderate impact Source”, “No Impact Source”, “Efficiency Control Factor”	Approval
		12/15/2010	Section revised to update definitions, correct references, and remove definitions no longer needed. Definitions added: “Administrative Revision”, “Consumer price index all urban consumers” or ”CPI-U”, “Proposed Allowable Emission Rate”, “Technical Permit Revision”, “Submittal”	Approval
Savings Clause				
20.11.2.8 NMAC	Savings Clause	5/24/2011	Repeal and replace: Any amendment to fees rules shall not affect actions pending for a violation	Approval
		12/15/2010	Section revised non-substantively	Approval
Severability				
20.11.2.9 NMAC	Severability	5/24/2011	Repeal and replace: Unconstitutional and invalidated portions of the fees rules will not invalidate remaining provisions	Approval
		9/7/2004 12/15/2010	Section revised non-substantively	Approval
Documents				
20.11.2.10 NMAC	Documents	5/24/2011	Repeal and replace: Documents cited and incorporated may be viewed at physical location	Approval

		9/7/2004 12/15/2010	Section revised non-substantively	Approval
General Provisions				
20.11.2.11 NMAC	General Provisions	5/24/2011	Repeal and replace: General provisions for payment of fees with certain permit or source document submittals	Approval
		9/7/2004	Section revised non-substantively	Approval
		12/15/2010	Section revised non-substantively	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B)
Authority-to-Construct Permit Fees; Fee Calculations and Procedures				
20.11.2.12 NMAC	Authority-to-Construct Permit Fees; Fee Calculations and Procedures	5/24/2011	Repeal and replace: Fee provisions, calculations, and procedures for minor and area source permits, pre-construction permits, permit modifications	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B)
		9/7/2004	Section revised non-substantively	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B)
		12/15/2010	Section revised to add reference to source registration in addition to permits, and to base fee amounts on allowable emission rates instead of PTE. Other revisions to update section consistent with updates to other subsections of the rule	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B)
Annual Emission Fees; Fee Calculations and Procedures				
20.11.2.13 NMAC	Annual Emission Fees; Fee Calculations and Procedures	5/24/2011	Repeal and replace: Annual emission fees, calculations, and procedures for sources, including permit modifications	Approval

		9/7/2004	Section revised non-substantively	Approval
		12/15/2010	Section revised regarding owner/operator challenge or correction request of annual fee amounts, addition of methodology for fugitive dust control permits, revised annual emission fees to be based on allowable emission rate rather than PTE, and revised to require annual emission rates be updated each year based on the consumer price index	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsections (A) and (B)
Filing and inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures				
20.11.2.15 NMAC	Filing and inspection Fees for Surface Disturbance Permits; Fee Calculations and Procedures	5/24/2011	Repeal and replace: Filing and inspection fee requirements for fugitive dust control permits	Approval
		9/7/2004 12/15/2010	Section revised to add specific filing and review fee amounts, change flat fee to tiered fee schedule based on acreage, add and update calculation methodology used to calculate non-programmatic dust control permit inspection fees, require fugitive dust rates be updated yearly based on the consumer price index, and require fugitive dust control construction permit fees for certain demolition activities	Approval
Fee Errors, Corrections and Refunds				
20.11.2.16 NMAC	Fee Errors, Corrections and Refunds	5/24/2011	Repeal and replace: Procedure and process for review of fees due at time of application; procedure for persons requesting correction or challenging invoiced fees	Approval
		9/7/2004	Revised section to exclude section's applicability to fugitive dust control permits	Approval

		12/15/2010	Revises section for review of correction request and various procedure aspects, makes fee for fugitive dust control construct permit application non-refundable	Approval
Failure to Pay				
20.11.2.17 NMAC	Failure to Pay	5/24/2011	Repeal and replace: Violation and penalty for failure to pay fees, and stating invoice incorrect not a defense	Approval
		9/7/2004	Section revised non-substantively	Approval
		12/15/2010	Section revised to include reference to appeal procedures for incorrect-fee challenges	Approval
Fee Schedule				
20.11.2.18 NMAC	Fee Schedule	5/24/2011	Repeal and replace: Fee schedule for annual emission fees, review fees, permit modification fees, and administrative fees	Approval
		9/7/2004 12/15/2010	Section revised to delete fees other than review fees consistent with updates in other sections of the rule, include a general review fee, require application review fee rates be updated each year based on the consumer price index, increase fees for each tier in fee schedule, and change emission rates basis from PTE to allowable emission rates	Approval
Application Review Fees for Modification of Existing Permits				
20.11.2.19 NMAC	Application Review Fees for Modification of Existing Permits	12/15/2010	New section specifying application review fees for modifications to an existing stationary source	Approval
Administrative and Technical Revision Application Fees; Portable Stationary Source Relocation Fees				
20.11.2.20 NMAC	Administrative and Technical Revision Application Fees; Portable Stationary Source Relocation Fees	12/15/2010	New section specifying administrative and technical revision fees for modifications to an existing permit, and specifies portables stationary source relocation fees for modifications to an existing permit	Approval
Annual Emissions Fees and Rates for Stationary Sources				

20.11.2.21 NMAC	Annual Emissions Fees and Rates for Stationary Sources	12/15/2010	New section specifying fees for annual emission source registrations, annual emission fees for permitted sources, and annual emission fees for emergency generators and gasoline service and fleet stations	Approval; No Action on references to Operating Permits (20.11.42 NMAC) in subsection (B)
Miscellaneous Fees – Administrative Fees; Variance Request Fees; Board Hearing Filing Fees				
20.11.2.22	Miscellaneous Fees – Administrative Fees; Variance Request Fees; Board Hearing Filing Fees	12/15/2010	New section specifying administrative fees, variance request fees, and board hearing filing fees	Approval

## II. EPA’s Evaluation

### A. What are the Requirements for EPA’s Review of a Fees SIP Submittal?

The Albuquerque/Bernalillo County AQCB adopted and the Governor of New Mexico submitted the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010, SIP revisions pursuant to the applicable provisions of section 110(a)(2) of the CAA related to fees. These federal requirements include permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. In addition to the applicable fee related requirements of section 110(a)(2), EPA’s evaluation must consider section 110(l) of the CAA. Section 110(l) of the CAA states that EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

### B. Do the Submitted Repeal and Replace Revisions and Subsequent SIP Revisions Meet the CAA Requirements?

Based on EPA’s evaluation of the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010 revisions, we propose to find these submitted rules and revisions meet the applicable fee related requirements of section 110(a)(2) of the CAA. These rules and revisions are summarized in Table 1 of this proposed rulemaking, and are



analyzed with more detail in the TSD. The rules and revisions contained within the Governor of New Mexico's submittals demonstrate compliance with section 110(a)(2) of the Act. For example, the Albuquerque/Bernalillo County EHD assesses fees when an owner or operator applies for an air permit, air permit renewal, or air permit amendment. Additionally, annual fees are assessed for sources with existing source registrations or permits. These fees are used to cover the permit review and permit issuance costs. The Department also assesses fees to partially offset the administrative cost of variance procedures and permit-related administrative hearings before the board; assesses fees to implement the requirements of Section 507 of the Clean Air Act by establishing adequate funding for small business stationary source technical and environmental compliance assistance program; and assesses fees to cover administrative expenses incurred by the Department in implementing and enforcing the provisions of the NMAC, the joint air quality control board ordinances, and the Albuquerque/Bernalillo County AQCB regulations. The fees assessed by the Department under 20.11.2 NMAC are also necessary to adequately implement the Parts 20, 41, 60, and 61 permitting programs for fugitive dust control and new construction and modifications to NSR/PSD in attainment and non-attainment areas. Furthermore, the revision to subpart 20.11.2.18 NMAC, specifically paragraph K, establishes replacement of a \$1000 fee for filing fees for hearings with a lower flat fee of \$125, including an option for the Department to lower that fee due to economic burden on the petitioner. Reduction of this kind of fee encourages more public involvement, meeting federal requirements for hearing processes. These examples, and the fee rules and revisions further described and evaluated in this proposal and TSD, evince a basis for EPA's proposed approval that the submittals meet the requirements of 110(a)(2).

The fee assessment provisions in 20.11.2 NMAC and submitted to EPA are a portion of the regulatory scheme regulating the Albuquerque/Bernalillo County New Source Review Permitting Program, and provide for permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit under the Permitting Program. EPA has previously reviewed the Albuquerque/Bernalillo County AQCB regulations for the Nonattainment New Source Review Program, Prevention of Significant Deterioration Permitting, and Minor NSR program, and has approved these programs as being consistent with the federal requirements. EPA approved revisions to the Nonattainment New Source Review Program and to the Prevention of Significant Deterioration Program on April 26, 2007 (72 FR 20728). EPA approved substantive revisions to the Minor NSR program on March 16, 1994 (59 FR 12172). Based on our evaluation of these fee assessment rules and revisions both described in this notice and TSD, EPA finds they meet the fee related requirements of section 110(a)(2) to in part cover costs for these previously approved programs, and proposes to approve the rules and revisions as explained in Table 1.

Our evaluation of the 2001 repeal and replace and the September 7, 2004, February 2, 2007, and December 15, 2010 revisions also demonstrates compliance with section 110(l) of the CAA, and further provides basis for proposal of approval of these rules and revisions. Pursuant to section 110(l) of the CAA, the 2001 repeal and replace provides for a broader breadth, application, and stringency of requirements related to fees than the previously approved April 10, 1980 SIP. Based on EPA's evaluation of these fee assessment provisions submitted, EPA proposes to find the submitted repeal and replace of, and revisions to, 20.11.2 NMAC establishing fee requirements for permits is consistent section 110(a)(2) of the CAA.

### **III. Proposed Action**

EPA is proposing an approval of the 2001 repeal and replace SIP revisions submitted by New Mexico on May 24, 2011, and SIP revisions submitted on September 7, 2004, February 2, 2007, and December 15, 2010 pursuant to section 110(a)(2) requirements of the CAA relating to fees. EPA is proposing these actions in accordance with section 110 of the Act.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 27, 2011

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011-28635 Filed 11/03/2011 at 8:45 am; Publication Date: 11/04/2011]